

**Notice of Allowability**

Application No.

10/806,238

Applicant(s)

GEEST, JAN VAN

Examiner

Art Unit

Louanne C Krawczewicz Myers

1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to application filed 3/23/04.
2. ☒ The allowed claim(s) is/are the claim.
3. ☒ The drawings filed on 23 March 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All   b) ☐ Some\*   c) ☐ None   of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_



**Examiner's Amendment**

An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to Applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **Must** be submitted no later than the payment of the Issue Fee.

**Examiner's Amendment Authorized**

Authorization for this Examiner's Amendment was given in a telephone interview with Richard C. Peet on January 28, 2005.

**Amendment to the Disclosure**

The application has been amended as follows:

- A. Page 1, line 6, "Margarita" has been deleted and --'Margarita'-- has been inserted in its place.
- B. Page 1, line 9, " 'Margarita'. . ." has been deleted and --'Margarita'.-- has been inserted in its place.
- C. Page 1, line 10 and 13, --naturally occurring spontaneous whole plant-- has been inserted before "mutation".

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- D. Page 1, line 15, --as a single plant-- has been inserted after "selected".
- E. Page 1, line 16, " s'Gravenzande" has been deleted and --s'Gravenzande-- has been inserted in its place.
- F. Page 2, line 2, "having lime leaf green" has been deleted and --yellow-green (lime colored)-- has been inserted in its place.
- G. Page 2, line 2, --a-- has been inserted after "with".
- H. Page 2, line 3, ", very dark green" has been deleted.
- I. Page 2, line 17, "and" has been deleted.
- J. Page 2, line 19 --; and-- has been inserted after "leaf".
- K. Page 2, line 22, "drawing illustrates" has been deleted and --drawings illustrate-- has been inserted in its place.
- L. Page 3, lines 14 and 15, "The color references are approximate as color depends to a degree on horticultural practices such as light level and fertilization rates."

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has been deleted and the following has been inserted in its place: --Colors in the photographs may differ slightly from the color values cited in the detailed botanical description which accurately describe the colors of the new Ficus. Colors may vary depending upon the degree of horticultural practices such as light level and fertilization techniques.-- .

M. Page 4, after line 1, before line 2, the following has been inserted:

--PLANT SPREAD/WIDTH: 60 cm. -- .

N. Page 4, line 4, --, exhibits 10-15 leaves on a lateral branch of approximately 15 centimeters-- has been inserted after "numerous".

O. Page 4, line 15, "VEINATION" has been deleted and --VENATION-- has been inserted in its place.

P. Page 4, line 16, --, color is consistent on both upper and lower surfaces of the leaf-- has been inserted after " 145 B".

Q. Page 4, line 21, --, diameter less than 1 mm and texture smooth-- has been inserted after "10 mm long".

R. Page 4, line 22, "particular" has been deleted.

S. Page 5, before line 1, the following has been inserted:

--LATERAL BRANCHES: Length, width and internode spacing can vary depending on environmental factors such as light, temperature and nutritional levels of the plant. The description below is from a plant grown in Homestead Florida in January of 2005 under shade cloth with 83% shade factor. Length : 12-27 cm. Diameter: Approximately 4 mm at base of lateral branch to less than one mm at the tip of branch and typical of *Ficus benjamina*. Internode length: 15-25 mm. Texture: Texture of wood is mildly rough and typical of *Ficus benjamina*. Strength of branching is typical of *Ficus benjamina* with medium strength and flexibility capable of supporting weight up to 5 kilos that will bend under that weight nearly reaching the floor. Color: Grey-brown close to RHS color 199A.

LENTICELS: Numerous and evident along the branches and are contrasting in color to the wood as they are a yellow-white color typical of *Ficus benjamina*, near 158D. Shape: Round and are less than 1mm in size, typical of *Ficus benjamina*. --.

T. Page 5, lines 1-3 have been deleted.

U. Page 5, after line 3, before line 4, the following has been inserted:

--FLOWER/FRUIT DESCRIPTION: Flowers and fruit have not been observed on the plants of the new Ficus.--.

V. Page 5, line 4, has been deleted and the following has been inserted in its place:

--TEMPERATURE RANGE: Temperature range relates to an acceptable temperature that the plant can exist under before experiencing irreversible foliage damage and/or death. In this instance, the *Ficus benjamina* 'Margarita' can withstand temperatures as low as 2 degrees Celcius before exhibiting irreversible damage and/or death. It is a tropical plant and will tolerate temperatures typical of other *Ficus benjamina* varieties. No claim is made to the contrary of *Ficus benjamina* tolerances. --.

X. Page 5, line 5 has been deleted.

**Amendment to the Abstract**

A. Page 7, lines 4 and 5 of the Abstract, "very dark green" has been deleted.

**Future Correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louanne C. Krawczewicz Myers whose telephone number is (571) 272-0979. The examiner can normally be reached on Monday and Thursday from 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Wang can be reached on (571) 272-0811. The fax phone numbers for the group is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

LKM



KENT BELL  
PRIMARY EXAMINER

